

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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Progressive Enterprises, Inc./Castaways Yacht Club  
and  
The Sunseeker Club in Annapolis, Inc.

**CIVIL NO. 08-3553-KMK-GAY**

Plaintiffs,

**ECF CASE**

-against-

M/Y CUQUITO (Hull ID No. TNRD1719J091), her engines, tackle, apparel, furniture, equipment, and all other necessaries thereunto appertaining and belonging *in rem*;

The Sunseeker Club, Inc. *in personam*;

M/Y BACKCOVE29030 (Hull ID No. NEH29030G405), her engines, tackle, apparel, furniture, equipment and all other necessaries thereunto appertaining and belonging *in rem*;

The Sunseeker Club at Castaways, Inc., *in personam*

**MOTION AND ORDER FOR  
APPOINTMENT OF  
SUBSTITUTE CUSTODIAN**

Defendants.

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Progressive Enterprises, Inc./Castaways Yacht Club and The Sunseeker Club in Annapolis, Inc. ("Plaintiffs") having appeared and made the following recitals:

1. On April 14, 2008, the Complaint herein was filed praying that the Motor Yacht CUQUITO (Hull ID No. TNRD1719J091), her engines, tackle, apparel, furniture, equipment and all other necessaries thereunto appertaining and belonging (collectively the "CUQUITO") and the Motor Yacht BACKCOVE29030 (Hull ID No. NEH29030G405), her engines, tackle, apparel,

furniture, equipment and all other necessaries thereunto appertaining and belonging (collectively the "BACKCOVE29030") be condemned and sold to pay Plaintiffs demands and claims and for other proper relief.

2. Plaintiffs have moved for an order directing the Clerk of Court to issue Warrants of Arrest commanding the United States Marshal to arrest and take into custody the CUQUITO and the BACKCOVE29030 and to detain the same in his custody until further Order of the Court.

3. It is contemplated that the United States Marshal will seize the CUQUITO and the BACKCOVE29030 forthwith and that custody by the United States Marshal will require the services of one or more keepers and will entail charges for wharfage and the other services usually associated with safekeeping vessels of this type.

4. Progressive Enterprises, Inc./Castaways Yacht Club has agreed to assume the responsibility of safekeeping said vessels and has consented to act as the custodian upon order of this Court, all for a sum, including wharfage and routine services required for the safekeeping of the particular vessel, at a rate of \$50.00 per day per vessel. The United States Marshal is unable to perform or to have performed at a comparable rate these same services. In any case, the transfer of the CUQUITO and the BACKCOVE29030 to the substitute custodian for safekeeping will not be effected until the Court approves such custodianship and all charges due the Marshal have been paid.

5. By declaration of its Secretary, Gloria Michaelis, appended hereto as Exhibit A and made a part hereof, Progressive Enterprises, Inc./Castaways Yacht Club avers that it has adequate facilities and supervision for proper maintenance and safekeeping of the CUQUITO and

the BACKCOVE29030 and has presented proof of insurance sufficient to respond in the event of damage to either vessel, or for damage or injury sustained by third parties due to any acts, faults, or negligence of said substitute custodian or its agents.

NOW, THEREFORE, IT IS HEREBY

ORDERED that Progressive Enterprises, Inc./Castaways Yacht Club, in consideration of the United States Marshal's consent to the substitution of custody, shall indemnify, hold harmless, and release the United States Marshal, the United States of America, their agents, servants, employees, and all others for whom they are responsible, from any and all liability and responsibility arising out of the care and custody of the CUQUITO and the BACKCOVE29030 from the date of the transfer of possession of said vessels; and it is further

ORDERED that Plaintiff shall defend the United States of America, the United States Marshal, their agents, servants, employees, and all others for whom they are responsible, against all claims and actions arising out of said substitute custody and, further, shall indemnify and hold harmless and be responsible to pay and satisfy all claims and judgments that might arise out of said substitute custody and shall be responsible and indemnify and hold harmless the United States of America, the United States Marshal, their agents, servants, employees, and all others for whom they are responsible, for all attorneys' fees, costs, expenses and disbursements incurred in defending against such claims or actions arising out of said substitute custody; and it is further

ORDERED that the United States Marshal shall surrender possession of the CUQUITO and the BACKCOVE29030 to the substitute custodian named herein upon executing the warrants in this action and upon payment of the United States Marshal's costs; and it is further

ORDERED that Progressive Enterprises, Inc./Castaways Yacht Club be, and is hereby, appointed the custodian of the CUQUITO and the BACKCOVE29030 to retain the same in its custody for possession and safekeeping for the aforementioned compensation until further Order of the Court; and it is further

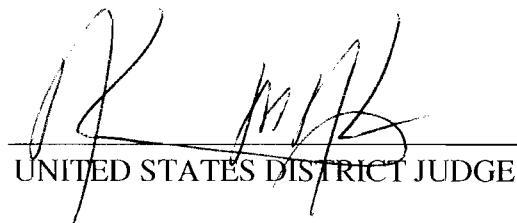
ORDERED that the substitute custodian is authorized to move the CUQUITO and the BACKCOVE29030 from the location of arrest to another suitable berth or storage location and to employ such services as may be necessary to accomplish same, provided that the vessels always remains within this District; and it is further

ORDERED that all United States Marshal's costs be paid prior to release of said vessels; and it is further

ORDERED that the substitute custodian must receipt for said vessels and the United States Marshal must attest to the date and time of release on a certified copy thereof; and it is further

ORDERED that Plaintiffs' attorney will serve the owner of each vessel with a copy of this Order.

Dated: April 16, 2008  
White Plains, New York

  
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UNITED STATES DISTRICT JUDGE